

BILL ANALYSIS

Senate Research Center

H.B. 3691
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 3691 amends the Government Code to authorize programs and services that would be provided in a judicial district by a community supervision and corrections department established in the judicial district, in lieu of establishing such a department, to be provided in the judicial district through a contract with a community supervision and corrections department established for another judicial district. The bill requires the Texas Board of Criminal Justice to adopt rules allowing departments to contract with one another as provided by the bill's provisions and requires, rather than authorizes, the board to adopt rules allowing departments to contract with one another for services or facilities.

The bill would also provide an option for mediation between certain misdemeanor offenders and victims would allow offenders to take responsibility for their actions and would provide victims and the state an expedited means of obtaining justice.

H.B. 3691 would provide for intermediate administrative sanctions to allow supervision officers to apply sanctions prior to an official hearing and that this practice allows the people who have the most contact with offenders on community supervision, and possibly the best insight into the offender's needs, to apply discipline to the offenders in an efficient and reasonable manner.

H.B. 3691 amends current law relating to the provision by certain judges or community supervision and corrections departments of certain programs and services, including certain pretrial programs and services, and to the imposition of certain sanctions against defendants supervised by those departments.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Board of Criminal Justice is modified in SECTION 1 (Section 76.002, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 76.002, Government Code, by adding Subsections (a-1) and (f) and amending Subsection (e), as follows:

(a-1) Authorizes the statutory county court judges trying criminal cases in the county or counties served by the judicial district to establish a pretrial victim-offender mediation program in accordance with Subchapter A-1, Chapter 56 (Rights of Crime Victims), Code of Criminal Procedure.

(e) Requires, rather than authorizes, the Texas Board of Criminal Justice to adopt rules allowing departments to contract with one another for services or facilities or to contract as provided by Subsection (f).

(f) Authorizes programs and services, in lieu of establishing a department as required by Subsection (a) (relating to requiring the district judge or district judges trying criminal cases in each judicial district and the statutory county court judges trying criminal cases in the county or counties served by the judicial district to perform establish a community

supervision and corrections department), to be provided under this chapter in a judicial district through a contract with a department established for another judicial district.

SECTION 2. Amends Chapter 76, Government Code, by adding Section 76.0021, as follows:

Sec. 76.0021. SYSTEM OF PROGRESSIVE INTERMEDIATE SANCTIONS. (a) Requires the judges described by Section 76.002 (Establishment of Departments), in addition to performing the duties delegated under that section, for the district courts and county courts at law in the judicial district that try criminal cases:

(1) adopt a single system of progressive intermediate sanctions for violations of conditions of community supervision that includes:

(A) sanctions for a failure to report, to participate in a program or service, to refrain from the use of alcohol or a controlled substance, or to pay fines, fees, and costs; and

(B) sanctions targeted for special cases or high risk offenders; and

(2) establish a review process to follow in considering a reduction in or early termination of community supervision.

(b) Requires the judges described by Section 76.002, in adopting a system of progressive intermediate sanctions under this section, to consider and authorizes the judges to adopt the model list of intermediate sanctions established under Section 509.017, Government Code.

SECTION 3. Amends Section 1, Article 28.01, Code of Criminal Procedure, to require that the pre-trial hearing be to determine any of certain matters, including a motion to allow the defendant to enter a pretrial victim-offender mediation program established under Section 76.002, Government Code.

SECTION 4. Amends Section 10, Article 42.12, Code of Criminal Procedure, by amending Subsections (a), (d), and (e) and adding Subsections (d-1) and (d-2), as follows:

(a) Authorizes only the judge, except as provided by Subsections (d) and (d-1) of this section, to alter conditions of community supervision.

(d) Authorizes a judge that places a defendant on community supervision to authorize the supervision officer supervising the defendant to modify the conditions of community supervision for the limited purpose of imposing an intermediate sanction under Subsection (d-1), rather than to authorize the supervision officer supervising the defendant or a magistrate appointed by the district courts in the county that give preference to criminal cases to modify the conditions of community supervision for the limited purpose of transferring the defendant to different programs within the community supervision continuum of programs and sanctions. Requires a supervision officer, before imposing an intermediate sanction, to provide written notice to the defendant of the nature of the violation or violations involved, the date on which each violation occurred, and the intermediate sanction to be imposed.

(d-1) Requires that the imposition of an intermediate sanction under this section conform with the system of progressive intermediate sanctions adopted under Section 76.0021, Government Code. Requires the defendant, on receipt of notice under Subsection (d), to shall immediately accept or object to the imposition of the intermediate sanction. Entitles a defendant who objects to the imposition of the intermediate sanction to an administrative review to be conducted by the community supervision and corrections department supervising the defendant not later than the fifth day after the date the defendant received the notice. Requires the director of the community supervision and corrections department, or the director's designee, at the conclusion of the administrative review, to dismiss or affirm the imposition of the intermediate sanction. Provides that, if

the director or director's designee, as applicable, affirms the imposition of the intermediate sanction, the intermediate sanction becomes effective immediately. Prohibits the court, on successful completion of an intermediate sanction, from revoking community supervision, proceed to an adjudication in the case, or impose any other sanction based on the violation for which the intermediate sanction was imposed.

(d-2) Prohibits a supervision officer from:

(1) imposing an intermediate sanction under Subsection (d) or (d-1) in response to a violation of the terms of community supervision if the violation is based on the commission of a felony offense; or

(2) imposing as an intermediate sanction under Subsection (d) or (d-1) any condition extending the term of community supervision, increasing a fine, or placing a defendant in a correctional facility, as defined by Section 1.07 (Definitions), Penal Code.

(e) Requires a supervision officer who modifies the conditions of community supervision by imposing an intermediate sanction, rather than requires a supervision officer or magistrate, if a supervision officer or magistrate modifies the conditions of community supervision, to:

(1) deliver a copy of the modified conditions to the defendant;

(2) file a copy of the modified conditions with the sentencing court; and

(3) note the date of delivery of the copy in the defendant's file.

Deletes existing text requiring the supervision officer or magistrate, if the defendant agrees to the modification in writing, to file a copy of the modified conditions with the district clerk and requiring that the conditions be enforced as modified. Deletes existing text requiring the supervision officer or magistrate, if the defendant does not agree to the modification in writing, to refer the case to the judge of the court for modification in the manner provided by Section 22 (Continuation or Modification) of this article.

SECTION 5. Amends Section 11(a), Article 42.12, Code of Criminal Procedure, to provide that conditions of community supervision may include, but shall not be limited to, certain conditions, including that the defendant is required to report to the supervision officer as directed by the judge or supervision officer, obey all rules and regulations of the community supervision and corrections department, and comply with any intermediate sanction imposed by the supervision officer under Section 10 (Authority to Impose, Modify, or Revoke Community Supervision), unless the condition is dismissed by the director of the community supervision and corrections department or by the director's designee.

SECTION 6. Amends Chapter 56, Code of Criminal Procedure, by adding Subchapter A-1, as follows:

SUBCHAPTER A-1. PRETRIAL VICTIM-OFFENDER MEDIATION PROGRAM

Art. 56.21. AUTHORITY TO ESTABLISH PROGRAM. (a) Authorizes a statutory county court judge to establish a pretrial victim-offender mediation program under Section 76.002, Government Code, for persons who:

(1) have been arrested for or charged with a misdemeanor under Title 7 (Offenses Against Property), Penal Code, in a statutory county court in this state; and

(2) have not previously been convicted of a felony or a misdemeanor, other than a misdemeanor regulating traffic and punishable by fine only.

(b) Authorizes a statutory county court that implements a program under this subchapter to adopt administrative rules as necessary or convenient to implement or operate the program, including additional criteria related to a defendant's eligibility to enter the program.

(c) Authorizes the judge of a statutory county court that establishes a pretrial victim-offender mediation program under this subchapter to:

(1) allow for the referral to the program of arrested persons who have not yet been indicted or otherwise formally charged; and

(2) adopt administrative procedures as necessary to implement and operate the program, including additional program requirements that have been approved by the attorney representing the state.

Art. 56.22. PROGRAM. (a) Provides that pretrial victim-offender mediation program established under Section 76.002, Government Code, is coordinated by the attorney representing the state and must require:

(1) the attorney representing the state:

(A) to identify defendants who are eligible to participate in the program, including a consideration by the attorney representing the state of whether the defendant meets any additional locally developed eligibility criteria; and

(B) to the extent feasible, to provide to each victim of an offense described by Article 56.21(a)(1) information and literature indicating that a victim-offender mediation program may be available in the criminal case if certain eligibility criteria are met by the defendant;

(2) the consent of the victim, the defendant, and the attorney representing the state to be obtained before the case may proceed to pretrial victim-offender mediation; and

(3) the defendant to enter into a binding mediation agreement in accordance with Article 56.24 that:

(A) includes an apology by the defendant; and

(B) requires the defendant to pay restitution to the victim or perform community service.

(b) Provides that all communications made in a pretrial victim-offender mediation program are confidential and are prohibited from being introduced into evidence except in a proceeding involving a question concerning the meaning of a mediation agreement.

(c) Authorizes a pretrial victim-offender mediation program to require the staff and other resources of pretrial services departments and community supervision correction departments to assist in monitoring the defendant's compliance with a mediation agreement reached through the program.

(d) Authorizes a pretrial victim-offender mediation to be conducted by a court-appointed mediator who meets the training requirements provided by Sections 154.052(a) (relating to requiring a person to have completed a minimum of 40 classroom hours of training in dispute resolution techniques to qualify for an appointment as an impartial third party) and (b) (relating to requiring a person to

complete the training required by Subsection (a) and an additional 24 hours of training in the fields of family dynamics, child development, and family law), Civil Practice and Remedies Code, or by any other appropriate person designated by the court. Provides that neither the attorney representing the state nor the attorney representing the defendant in the criminal action may serve as a mediator under the pretrial victim-offender mediation program.

(e) Authorizes the court, if a defendant enters a pretrial victim-offender mediation program, to defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt. Prohibits the court from requiring the defendant to admit guilt or enter a plea of guilty or nolo contendere to enter the program.

(f) Requires that the case be returned to the docket and proceed through the regular criminal justice system if:

(1) a pretrial victim-offender mediation does not result in a mediation agreement; or

(2) the defendant fails to successfully fulfill the terms of the mediation agreement by the date specified in the mediation agreement.

(g) Provides that, if a case is returned to the docket under Subsection (f), the defendant retains all of the rights that the defendant possessed before entering the pretrial victim-offender mediation program under this subchapter. Provides that, notwithstanding any other law, for purposes of determining the duration and expiration of an applicable statute of limitation under Chapter 12 (Limitation), the running of the period of limitation is tolled while the defendant is enrolled in a program under this subchapter.

(h) Requires the court on the motion of the attorney representing the state to dismiss the indictment or information charging the defendant with the commission of the offense, if the defendant:

(1) successfully completes the mediation agreement as determined by the attorney representing the state; and

(2) either:

(A) pays all court costs; or

(B) enters a payment plan approved by the court or the attorney representing the state for such payment.

(i) Authorizes the attorney representing the state or the court to extend the initial compliance period granted to the defendant. Provides that a determination by the court regarding whether the mediation agreement has been successfully completed is final and is prohibited from being appealed.

(j) Requires the court, if the defendant is not arrested or convicted of a subsequent felony or misdemeanor other than a misdemeanor regulating traffic and punishable by fine only on or before the first anniversary of the date the defendant successfully completed a mediation agreement under this subchapter, on the motion of the defendant, to enter an order of nondisclosure under Section 411.081 (Application of Subchapter), Government Code, as if the defendant had received a discharge and dismissal under Section 5(c) (relating to requiring a judge to dismiss the proceedings against a defendant and discharge him), Article 42.12, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the pretrial victim-offender mediation program.

Art. 56.23. MOTION AND HEARING. (a) Provides that the court on its own motion is authorized, and on the motion of either party is required, to hold a pretrial hearing to determine whether to allow an eligible defendant to enter a pretrial victim-offender mediation program under this subchapter.

(b) Requires the court to conduct a pretrial hearing under this article in accordance with Chapter 28 (Motions, Pleadings and Exceptions) and the rules of evidence.

(c) Authorizes either party, at a pretrial hearing under this article, to present any evidence relevant to the defendant's eligibility under Article 56.22 and other additional locally developed eligibility criteria to enter a pretrial victim-offender mediation program.

Art. 56.24. MEDIATION AGREEMENT. (a) Requires that a mediation agreement under this subchapter be:

(1) signed by the defendant and the victim; and

(2) ratified by the attorney representing the state in a request for a court order documenting and approving the mediation agreement.

(b) Authorizes a mediation agreement under this subchapter to require testing, counseling, and treatment of the defendant to address alcohol abuse, abuse of controlled substances, mental health, or anger management or any other service that is reasonably related to the offense for which the defendant was arrested or charged.

(c) Provides that a mediation agreement under this subchapter is not valid for more than one year after the date on which the mediation agreement is ratified unless the court and the attorney representing the state approve the extension of the agreement.

(d) Provides that a mediation agreement under this subchapter does not constitute a plea or legal admission of responsibility.

Art. 56.25. OVERSIGHT. (a) Authorizes the lieutenant governor and the speaker of the house of representatives to assign to appropriate legislative committees duties relating to the oversight of pretrial victim-offender mediation programs established under this subchapter.

(b) Authorizes a legislative committee or the governor to request the state auditor to perform a management, operations, or financial or accounting audit of a pretrial victim-offender mediation program established under this subchapter.

Art. 56.26. FEES. (a) Authorizes a pretrial victim-offender mediation program established under this subchapter to collect from a defendant in the program:

(1) a reasonable program participation fee not to exceed \$500; and

(2) an alcohol or controlled substance testing, counseling, and treatment fee in an amount necessary to cover the costs of the testing, counseling, or treatment if such testing, counseling, or treatment is required by the mediation agreement.

(b) Authorizes fees collected under this article to be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the pretrial victim-offender mediation program. Requires that the fees be:

- (1) based on the defendant's ability to pay; and
- (2) used only for purposes specific to the program.

SECTION 7. Amends Subchapter A, Chapter 102, Code of Criminal Procedure, by adding Article 102.0179, as follows:

Art. 102.0179. COSTS ATTENDANT TO PRETRIAL VICTIM-OFFENDER MEDIATION. (a) Requires a defendant who participates in a pretrial victim-offender mediation program established under Section 76.002, Government Code, on successful completion of the terms of the defendant's mediation agreement or on conviction, to pay as court costs \$15 plus an additional program participation fee as described by Article 56.26 in the amount prescribed by that article.

(b) Requires the court clerk to collect the costs imposed under this article. Requires the clerk to keep a separate record of any money collected under this article and to pay any money collected to the county treasurer or to any other official who discharges the duties commonly delegated to the county treasurer for deposit in a fund to be known as the county pretrial victim-offender mediation program fund.

(c) Requires a county that collects court costs under this article to use the money in a fund described by Subsection (b) exclusively for the maintenance of the pretrial victim-offender mediation program operated in the county.

SECTION 8. Amends Subchapter B, Chapter 102, Government Code, by adding Section 102.0216, as follows:

Sec. 102.0216. ADDITIONAL COURT COSTS: CODE OF CRIMINAL PROCEDURE. Requires a defendant who participates in a pretrial victim-offender mediation program established under Section 76.002 to pay on successful completion of the terms of the defendant's mediation agreement or on conviction, in addition to all other costs, to help fund pretrial victim-offender mediation programs established under that section (Art. 102.0179, Code of Criminal Procedure), \$15 plus an additional program participation fee in an amount not to exceed \$500.

SECTION 9. Amends Chapter 509, Government Code, by adding Section 509.017, as follows:

Sec. 509.017. MODEL LIST OF PROGRESSIVE INTERMEDIATE SANCTIONS. Requires the community justice assistance division of the Texas Department of Criminal Justice (division) to establish a model list of progressive intermediate sanctions that may be adopted in a judicial district under Section 76.0021.

SECTION 10. (a) Provides that the change in law made by this Act in adding Section 76.002 (a-1), Government Code, and Subchapter A-1, Chapter 56, Code of Criminal Procedure, applies to a defendant who enters a pretrial victim-offender mediation program under that subchapter regardless of whether the defendant committed the offense for which the defendant enters the program before, on, or after the effective date of this Act.

(b) Makes application of the change in law made by this Act in adding Article 102.0179, Code of Criminal Procedure, and Section 102.0216, Government Code, prospective.

SECTION 11. (a) Requires the judges described by Section 76.002, Government Code, to adopt the system and establish the review process required by Section 76.0021, Government Code, as added by this Act, not later than January 1, 2012.

(b) Requires the division to adopt the model list of progressive intermediate sanctions as required by Section 509.017, Government Code, as added by this Act, not later than November 1, 2011.

SECTION 12. Effective date: upon passage or September 1, 2011.